

Selected Documents from Claim File

Claim No. LRF-1998-0622-01

CLAIM PAYMENT CHECKLIST

To be used for claims arising prior to 07/01/98

I. General Information

LRF Claim No: <u>LRF-1998-0622-01</u>	Related Claim Nos: _____
1. Claimant: Name: <u>Dixie Woodworks Inc</u> Address: <u>586 West 9320 South</u> City, State, Zip: <u>Sandy, Utah 84070</u> Telephone: <u>(801)561-1667</u> DOPL/LRF No: <u>271592 (1/1/95)</u>	
2. Claimant's Legal Counsel: Name/Law Firm: <u>Richard D. Bradford, Bradford Brady & Johnson</u> Address: <u>389 North University Avenue</u> City, State, Zip: <u>Provo, Utah 84601</u> Telephone: <u>(801)374-6272</u>	
3. Non-Paying Party/Permissive Party: (Entered Appearance ___ Yes ___ No) Name: <u>Glendon Corporation</u> Address: <u>730 West 500 South</u> City, State, Zip: <u>Bountiful, Utah 84011</u> Telephone: <u>(801)295-7700</u> DOPL No: <u>308671 (7/31/95)</u>	
4. Non-Paying Party/Permissive Party's Legal Counsel: Name/Law Firm: <u>Reed R. Hellewell, Kirton & McConkie</u> Address: <u>60 East South Temple, #1800</u> City, State, Zip: <u>Salt Lake City, Utah 84111</u> Telephone: <u>(801)328-3600</u>	
5. Original Contractor: Name: <u>Glendon Corporation</u> Address: <u>730 West 500 South</u> <i>As PO Box 874</i> City, State, Zip: <u>Bountiful, Utah 84011</u> <i>Boutful UT 84011</i> Telephone: <u>(801)295-7700</u> DOPL No: <u>308671 (7/31/95)</u>	
6. Amount claimed: <u>\$14,236.82</u>	
7. Owner: Name: <u>Ray & Diane Johnson</u> Address: <u>1521 North 700 East</u> City, State, Zip: <u>Bountiful, Utah 84011</u> Telephone: _____	

8. Subsequent Owner: Name: _____ Address: _____ City, State, Zip: _____ Telephone: _____	Date: _____
9. Owner-Occupied Residence: Address/Location: <u>1180 South Lorien Drive, Bountiful, Utah 84101</u> Legal Description: <u>All of Lot 709, Stone Ridge Subdivision, Plat G</u>	
10. Claim Classification: <u> </u> Formal <u> X </u> Informal	

II. Claim Processing Information

Initial Claim Processing -- All Claims:	Received	Forwarded
Front Desk	6/22/98	6/24/98
LRF Specialist--set up file, notice of filing, CRIS entry	6/24/98	6/29/98
Permissive Party response Deadline: <u>Letter sent 6/29/98</u>	06/29/98	07/29/98
LRF Specialist/Claims Examiner--screening, c/d letter Reason(s) for conditional denial: <u>Failure to provide: 1) evidence of civil action/bankruptcy, 2) NCA, 3) Judgment 4) collection efforts, 5) owner occupied residence affidavit, 6) modifications to the original owner contract as mentioned by the owners' affidavit, 7) evidence of full payment, 8) invoices for services, 9) evidence of costs, 10) evidence of interest, 11) attorney fee affidavit, 12) Certification and Affidavit regarding reimbursement from other sources.</u>	07/29/98	09/18/98
Claimant--response to c/d letter Deadline: <u>10/19/98</u>	09/18/98	10/19/98

<p>LRF Coordinator/Claims Examiner—substantive review, c/d letter, or recommendation and disposition letter(s).</p> <p>Reason(s) for denial: <u>Claimant's response to the conditional denial letter indicates that judgment has not yet been entered in this case. Therefore, this claim is not yet ripe for Division review. But even if the claim were brought after judgment is obtained, the complaint was not filed within 180 days from completion of qualified services, and the Fund does not have jurisdiction over the claim. We also have no jurisdiction over the claim because Division records show no Notice of Commencement of Action filing by Claimant. In response to the conditional denial letter, Claimant's counsel submitted a document entitled Notice of Commencement of Action, but it bears no Division stamp or any indication that we received the filing. Therefore, this claim will be denied.</u></p>	10/19/98	11/23/98
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Section's Recommended Disposition – ALL CLAIMS:
 ___ Approve for full payment ___ Approve for partial payment X Deny ___ Dismiss
 Date: 11/23/98
 Reason(s): No judgment has been entered, therefore claim is not yet ripe for Division review. In addition, claimant's complaint against the non-paying party was not filed within the 180 day statutory period, and Claimant failed to file a Notice of Commencement of Action ~~was~~ filed with the Division.

FINAL ORDER -- ALL CLAIMS:
 ___ Approve for full payment ___ Approve for partial payment X Deny ___ Dismiss
 Date: 11/23/98
 Reason(s): See Section recommendation above.

If Order is fully or partially denied:
 Reason(s) for denial: See section recommendation above.
 Appeal deadline: 12/23/98
 Date request for agency review filed: _____
 Date/Nature of Order: _____

III. Jurisdiction Checklist

Y/N	Inits	Date	Issue
NO	mam	11/23/98	Is Application Jurisdictionally Sound?

NO	mam	11/23/98	<p>A. Claimant brought civil action against the non-paying party within 180 days from the last day claimant provided qualified services, which action was to recover monies owed him for the services, or was precluded from doing so by the non-paying party's bankruptcy filing within 180 days of claimant's completion of qualified services.</p> <p>(38-11-204(3)(d)(i)(A) and (iv).</p> <p><u>Claimant's application states it provided services from 10/28/97 through 11/28/97. (Claim file, p. 2). In response to the conditional denial letter, claimant submitted copies of invoices on the Johnson residence dated 10/28/97 through 11/28/97, totaling \$14,236.82 as claimed by the claimant's application. (Claim file, pp. 99-102, 2). (Claimant also submitted copies of invoices on the Horton property, and invoices for services to unidentified properties—it is unclear why these were submitted, as they do not appear to relate to the claim on this Johnson residence).</u></p> <p><u>Also in response to the conditional denial letter, Claimant submitted a copy of its complaint against the non-paying party. (Claim file, pp. 64-72). The complaint does not bear a filing stamp, but is dated 6/3/98. (Claim file, p. 72). The copy of the Notice of Commencement of Action submitted by claimant states that the complaint was filed in the 3rd District Court on 6/20/98. (Claim file, p. 75) However, the clerk of court informed by telephone on 11/23/98 that the actual filing date was 6/23/98.</u></p> <p><u>Therefore, the complaint was filed 207 days after the qualified services date of 11/28/97. As a result, we do not have jurisdiction to review the claim.</u></p>
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NO	mam	11/23/98	<p>B. If civil action filing is required, notice of commencement of action was timely filed within 30 days of claimant's filing of civil action. (38-11-204(3)(d)(i)(B))</p> <p><u>Claimant had not submitted a copy of the Notice of Commencement of Action with its claim application. In response to the conditional denial letter, claimant submitted a document entitled Notice of Commencement of Action, but it appears the last page is missing, as there is no signature or date on this document. (Claim file, pp. 75-76) Furthermore, there is no stamp from the Division indicating that we received this document. The NCA records of the Division have been searched and no notice of commencement of action has been found regarding Claimant and Glendon Corporation.</u></p> <p><u>Because no notice of commence of action was filed by Claimant, we again have no jurisdiction to review this claim.</u></p>
NO	mam	11/23/98	<p>C. Claim application was timely filed within 120 days of the civil judgment or bankruptcy filing. (38-11-204(2)).</p> <p><u>Claimant filed this application on 6/22/98. However, Claimant has informed that no judgment has yet been entered in this matter. (Claim file, p. 34). This was also confirmed by the clerk of court on 11/23/98.</u></p> <p><u>Until a judgment has been entered on this claim, the claim is not ripe, and we do not have jurisdiction to review the claim. (However, even if it were ripe, the claim would be denied because Claimant failed to file the complaint on a timely basis, and further failed to file a notice of commencement of action.</u></p>

IV. Complete Application Checklist

Y/N	Inits	Date	Issue
			Is Application Complete?
			A. Form submitted. (38-11-204(1)(c))
			B. Form completed. (38-11-204(1)(c))
yes	kks	6/22/98	C. Application fee submitted. (38-11-204(1)(b)) ICN No: <u>817461002\5</u>
			D. Supporting documents submitted. (38-11-204(1)(c))

				1. Evidence of written owner contract (R156-38-204a(1))
				a. Written contract between owner and original contractor/real estate developer; (R156-38-204a(1)(a)) or
				b. Civil judgment with appropriate findings. (R156-38-204a(1)(b)) or
				2. Evidence of building permit compliance. 156-38-204a(2))
				a. Building permit; (R156-38-204a(2)(a)) or
				b. Letter that building permit is not required. (R156-38-204a(2)(b))
				3. Evidence of compliance with licensing statute: (R156-38-204a(3))
				a. Original contractor is licensed; or
				b. Original contractor is unlicensed, and
				documentation of exemption from licensure; or
				c. Real estate developer.
				4. Evidence that owner paid original contractor/real estate developer in full: (R156-38-204a(4))
				a. Affidavit from original contractor/real estate developer; (R156-38-204a(4)(a)) or
				b. Civil judgment with appropriate finding; (R156-38-204a(4)(b)) or

				c. Affidavit that claimant was precluded from obtaining an affidavit or civil judgment, (R156-38-204a(4)(c)) and
				independent evidence. (R156-38-204a(4)(c))
				5. Evidence that claimant brought civil action against original contractor/real estate developer: (R156-38-204a(5))
				a. Complaint, (R156-38-204a(5)(a)) and
				Notice of Commencement of Action; (R156-38-204a(5)(b)) or
				b. Non-paying party's bankruptcy filing. (R156-38-204a(5)(c))
				6. Evidence that non-paying party failed to pay claimant: (R156-38-204a(6))
				a. Civil judgment with appropriate finding; (R156-38-204a(6)(a)) or
				b. Non-paying party's bankruptcy filing, (R156-38-204a(6)(b)) and
				Independent evidence. (R156-38-204a(6)(b))
				7. Evidence that claimant made a reasonable attempt to collect the judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing: (R156-38-204a(7))
				a. Supplemental order, (R156-38-204a(7)(a)) and
				b. Return of service of supplemental order, (R156-38-204a(7)(b)) and

				c. If assets identified, Writ of Execution, (R156-38-204a)(7)(c)) and
				d. If assets identified, Return of Execution; (R156-38-204a)(7)(d)) or
				e. Non-paying party's bankruptcy filing. (R156-38-204a)(7)(e))
				8. Evidence that the residence is an owner-occupied residence. (R156-38-204a(1)(a)(i) and (ii)
				a. Owner-Occupied Residence Affidavit; (R156-204a(9)(a)) or
				b. Civil judgment containing appropriate finding; (R156-38-204a(9)(b)) or
				b. Evidence that claimant was unable to obtain an Owner-Occupied Residence Affidavit, (R156-38-204a(9)(c)) and
				independent evidence. (R156-38-204a(9)(c))
				E. Signed Certification and Affidavit. (R156-38-204(8))
				F. Completed Certificate of Service. (R156-38-105(5)) and (6))
				G. Completed Demographic Questionnaire.

VIII. Demographic Data

Source: Claimant's Demographic Questionnaire.

1. Type of business entity used by claimant: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Other
2. Number of employees employed by claimant: <input type="checkbox"/> None <input type="checkbox"/> 1-4 <input type="checkbox"/> 5-9 <input checked="" type="checkbox"/> 10-19 <input type="checkbox"/> 20-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100+
3. Claimant's gross annual revenue: <input type="checkbox"/> 0-\$9,000 <input type="checkbox"/> \$10,000-\$49,000 <input type="checkbox"/> \$50,000-\$99,000 <input type="checkbox"/> \$100,000-\$249,000 <input type="checkbox"/> \$250,000-\$499,000 <input type="checkbox"/> \$500,000-\$999,000 <input type="checkbox"/> \$1,000,000-\$4,999,000 <input checked="" type="checkbox"/> \$5,000,000+
4. Number of years claimant has been in business: <input type="checkbox"/> 0-1 <input type="checkbox"/> 2-4 <input checked="" type="checkbox"/> 5-9 <input type="checkbox"/> 10-14 <input type="checkbox"/> 15-19 <input type="checkbox"/> 20+
5. Capacity in which claimant is claiming: <input type="checkbox"/> General Contractor <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Other _____
6. Is claimant licensed through DOPL? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
7. Type of business entity used by non-paying contractor or real estate developer, if known: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Unknown
8. Number of employees employed by non-paying party, if known: <input type="checkbox"/> None <input type="checkbox"/> 1-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-19 <input type="checkbox"/> 20-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100+ <input checked="" type="checkbox"/> xxxx <input type="checkbox"/> Unknown
9. Non-paying party's gross annual revenue, if known: <input type="checkbox"/> 0-\$9,000 <input type="checkbox"/> \$10,000-\$49,000 <input type="checkbox"/> \$50,000-\$99,000 <input type="checkbox"/> \$100,000-\$249,000 <input type="checkbox"/> \$250,000-\$499,000 <input type="checkbox"/> \$500,000-\$999,000 <input type="checkbox"/> \$1,000,000-\$4,999,000 <input type="checkbox"/> \$5,000,000+ <input type="checkbox"/> Unknown
10. Number of years non-paying party has been in business, if known: <input type="checkbox"/> 0-1 <input type="checkbox"/> 2-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-14 <input type="checkbox"/> 15-19 <input type="checkbox"/> 20+ <input checked="" type="checkbox"/> xx <input type="checkbox"/> Unknown
11. Is non-paying party licensed through DOPL? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Unknown

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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY	:	ORDER
FUND CLAIM OF DIXIE WOODWORKS,	:	
INC., REGARDING THE CONSTRUCTION BY	:	
GLENDON CORPORATION, BUILDERS,	:	Claim No. LRF-1998-0622-01
ON THE RESIDENCE OF RAY AND	:	
DIANE JOHNSON	:	

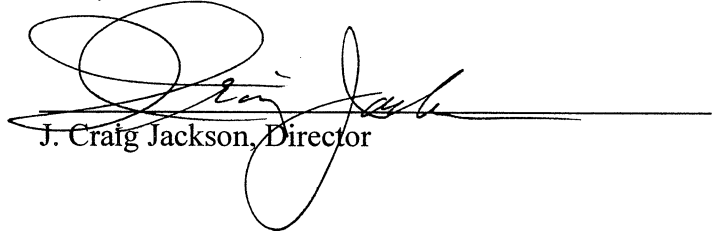
Being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds, pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3)(1998), that the claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-204(1)(a)(1998). Specifically, the claimant has failed to obtain a judgment against the non-paying party, Glendon Corporation, and has failed to obtain an order in supplemental proceedings and a writ of execution, all required by UTAH CODE ANN. § 38-11-204(3)(c)(1998). As a result, this claim is not ripe for review by the Division.

Even if the claim were ripe for review, however, this claim would be denied because Claimant has failed to timely file a civil action, and has further failed to file a notice of commencement of action. UTAH CODE ANN. § 38-11-204(3)(c)(i)(A)(1998) requires a claimant to file civil action to recover monies owed by the non-paying party within 180 days from the date the qualified services were last provided. Claimant last provided qualified services on November 28, 1997. However, Claimant did not file its civil action complaint against Glendon Corporation until June 23, 1998, 207 days later. UTAH CODE ANN. § 38-11-204(3)(c)(i)(B)(1998) requires a

claimant to file a notice of commencement of action with the Division. A search of Division records shows no such filing by Claimant. Although Claimant's counsel has submitted a document entitled Notice of Commencement of Action, that document is not dated or signed, and most importantly, it does not bear the Division stamp or any evidence that Claimant filed the document with the Division. The Division, therefore, has no jurisdiction to review this claim.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 24th day of November, 1998.



J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

LAW OFFICES
BRADFORD, BRADY & JOHNSON
389 North University Avenue
P.O. Box 432
Provo, Utah 84603

Per your request.
Rich

Richard D. Bradford
M. James Brady
S. Austin Johnson
Kim H. Buhler

Telephone: (801) 374-6272
Facsimile: (801) 374-6282

December 9, 1998

Douglas C. Borba, Executive Director
Utah Department of Commerce
Heber M. Wells Building
160 East 300 South
Box 146701
Salt Lake City, Utah 84114-6701

JAN 23 1999
DIVISION OF CORPORATIONS
& PROFESSIONAL LICENSING

RE: *Dixie Woodworks, Inc. / Glendon Corporation / Ray & Diane Johnson*
Claim No. LRF-1998-0622-01

Dear Mr. Borba:

I represent Dixie Woodworks, Inc. in the above-referenced matter. This letter will serve as our request for agency review of the Order dated November 24, 1998, a copy of which is enclosed. We believe a review is needed on the grounds that the factual basis cited for the denial are not accurate. We request reversal of the November 24, 1998, order and approval of the claim.

Very truly yours,

BRADFORD, BRADY & JOHNSON

Richard D. Bradford
RICHARD D. BRADFORD
Attorney at Law

RDB:dvc
Enclosure

cc: Dixie Woodworks, Inc.

DEC 18 1998

UTAH DEPARTMENT OF
OCCUPATIONAL
& PROFESSIONAL LICENSING

BEFORE THE

DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF
DIXIE WOODWORKS, INC.

:
:
:
:

ORDER ON REVIEW

DOPL Case No. LRF-1998-0622-01

INTRODUCTION

This matter comes before the Executive Director on the request of the Petitioner, Dixie Woodworks, Inc. (hereafter "Petitioner"), by and through counsel, for agency review of the denial of its claim against the Residence Lien Recovery Fund by the Division of Occupational and Professional Licensing (hereafter "Division").

STATUTES OR RULES PERMITTING OR REQUIRING REVIEW

Agency review of the Division's decision is conducted pursuant to Section 63-46b-12, Utah Code Annotated, and Rule R151-46b-12 of the Utah Administrative Code.

ISSUES REVIEWED

1. Whether the Petitioner has filed a request for agency review upon which the relief sought might be granted.

FINDINGS OF FACT

1. On November 24, 1998 the Division entered its order denying Petitioner's claim against the lien recovery fund. The Division found that Petitioner had failed to obtain a judgment against the non-paying party and also therefore did not obtain an order in supplemental proceedings and a writ of execution on the judgment.
2. In its Order the Division further found that Petitioner had failed to timely file a civil action and failed to file a notice of commencement of action since it did not file suit against the non-paying party until 207 days after the last provided qualifying services.
3. Petitioner filed a timely request for agency review alleging only that "the factual basis cited for the denial are not accurate" and seeking a reversal and approval of the claim.

CONCLUSIONS OF LAW

1. Recovery from the lien fund is not a matter of right but is rather governed by very specific laws and rules which must be complied with before a claim can be paid by the Division. The mandatory statutory requirements provide, among other things, that:

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

(a) the claimant was a qualified beneficiary during the construction on a residence;

(b) the claimant complied with the requirements of Section 38-11-204; and

(c) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

(b) If the claimant is a laborer or is precluded from obtaining a judgment because the person described in Subsection 38-11-204(3)(b) has filed bankruptcy, the director shall determine

the amount to be paid from the fund.

(c) If the qualified beneficiary obtains a judgment, subject to the limitation of this section, the director shall order payment of the amount of the judgment.

2. The minimum requirements for establishing a claim against the fund are set out in UTAH CODE ANN. §38-11-204 providing, *inter alia*, that:

(1) To claim recovery from the fund a person shall:

(a) meet the requirements of either Subsection (3)

(3) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, **a qualified beneficiary shall establish that: . . .**

(c) (i) **the qualified beneficiary filed:**

(A) **an action to recover monies owed him within 180 days from the date the qualified beneficiary last provided qualified services; and**

(B) **filed with the division a notice of commencement of action within 30 days from the date the qualified beneficiary filed an action to recover monies owed him;**

(ii) **the qualified beneficiary has obtained a judgment against the person described in Subsection (3)(b) who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;**

(iii) (A) **the qualified beneficiary has obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property and has received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b); and**

(B) **if assets subject to execution are discovered as a result of the order required under Subsection (3)(c)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from a court of competent jurisdiction; or**

(iv) **has been precluded from obtaining a judgment against that person because that person filed bankruptcy; and**

(d) **the qualified beneficiary is not entitled to**

reimbursement from any other person.

(e) If a qualified beneficiary fails to file the notice with the division required under Subsection (3)(c)(i)(B), the claim of the qualified beneficiary shall be paid:

(i) if otherwise qualified under this chapter;

(ii) to the extent that the limit of Subsection 38-11-203(4)(a)(i) has not been reached by payments from the fund to qualified beneficiaries who have complied with the notice requirements of Subsection (3)(c)(i)(B); and

(iii) in the order that the claims are filed by persons who fail to comply with Subsection (3)(c)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a)(i) (Emphasis added).

3. Petitioner alleges that “the factual basis cited for the denial are not accurate” but offers nothing to support this bald assertion. The *Department of Commerce Administrative Procedures Act Rules* provide [UTAH ADMIN R151-46b-12(7)] that “[t]he standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

4. UTAH CODE ANN. §63-46b-16(4) provides, *inter alia*, that

The appellate court shall grant relief only if, on the basis of the agency’s record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

. . . .

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

5. The heavy burden of overturning the Division’s ruling based upon the factual determinations made by the Division is upon the Petitioner. The test is whether the findings are supported by substantial evidence.

“This court grants great deference to an agency’s findings, and will uphold them if they are ‘supported by substantial evidence when viewed in light of the whole record before the court’”

“Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion’” “In applying the substantial evidence test, we review the ‘whole

record' before the court, and consider both evidence that supports the Board's findings and evidence that fairly detracts from them." (Citations omitted). *Albertsons v. Dept. Of Employment Sec.*, 854 P.2d 570 (Utah App. 1993).

6. Before attempting to argue weight of the evidence the Petitioner must first marshal all of the evidence supporting the Boards findings of fact and show that such findings are unsupported by any substantial evidence. *First Nat'l Bank v. County Bd. of Equalization*, 799 P. 2d 1163 (Utah 1990). The Utah Court of Appeals has recently stated that such a failure to marshal the evidence will cause the court to "... accept as conclusive the ALJ's findings of facts". *Crapo v. Industrial Comm'n*, 922 P.2d 39 (Utah App. 1996).

7. A recompilation of what is entailed in marshaling evidence was included in the recent case *Campbell v. Box Elder County*, 346 Utah. Adv. Rep. 9 (Utah App. June 25, 1998):

To successfully challenge a trial court's finds of fact on appeal, "[a]n appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous.'" (citations omitted). When a party fails to marshal the evidence supporting a challenged fact finding, we reject the challenge as "nothing more than an attempt to reargue the case before [the appellate] court." (citations omitted). Thus, we "assume that the record supports the findings of the trial court and proceed to a review of the accuracy of the lower court's conclusions of law and the application of that law in the case." (citations omitted).

8. In the case at bar Petitioner has not only not marshaled the evidence as required but rather merely argues that the Division erred on the facts without specifying how or what alternative facts were available. Since Petitioner failed to marshal the evidence, the findings of fact made by the Division will be accepted as the facts in this appeal.

9. The test on appeal is to look to the whole record to determine if there is substantial evidence to support the decision reached by the hearing body. In this case there are no facts alleged as being contrary to the facts found by the Division. It is not the office of an

administrative appeal to permit the Executive Director to substitute his judgment - or in this case his guess - for that of those who examined the evidence adduced below.

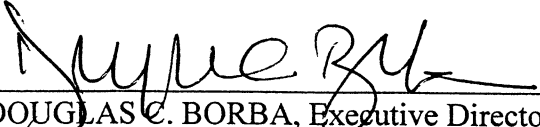
10. The Division found that Petitioner had not filed a claim which could be acted upon since it did not obtain a judgment against the non-paying party and attempt to execute as required by law. The uncontradicted evidence before the Executive Director is that Petitioner did not file suit against the non-paying party until after the expiration of the statutory period for doing so. The language of the statute makes such a timely filing of suit jurisdictional and the Division, as an administrative agency created by the legislature, is without the power or authority to accept and pay a claim not made in accordance with the law.

ORDER

The Executive Director of the Department of Commerce having made the above Findings of Fact and Conclusions of Law, it is, therefore

ORDERED that the decision of the Division of Occupational and Professional Licensing denying the claim of Dixie Woodworks, Inc. should be and is hereby affirmed.

SO ORDERED this the 17th day of December, 1998.



DOUGLAS C. BORBA, Executive Director
Utah Department of Commerce

NOTICE OF RIGHT TO APPEAL

Judicial review of this Order may be obtained by filing a Petition for Review with the District Court within 30 days after the issuance of this Order on Review. Any Petition for Review must comply with the requirements of Sections 63-46b-14 and 63-46b-15, Utah Code Annotated.

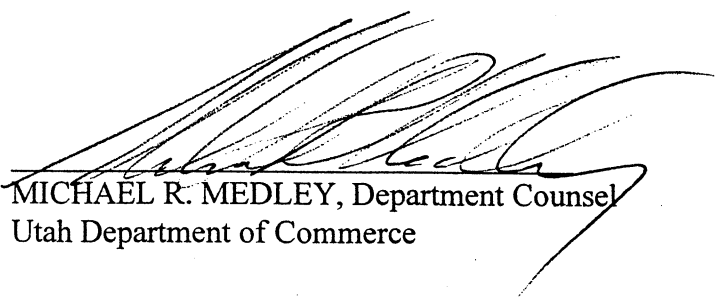
CERTIFICATE OF MAILING

I certify that on the 17th day of December, 1998, the undersigned mailed a true and correct copy of the foregoing Order on Review by certified mail, properly addressed, postage prepaid, to:

Richard D. Bradford, Esq.
Bradford, Brady & Johnson
Attorneys at Law
P. O. Box 432
Provo UT 84603
ATTORNEY FOR DIXIE WOODWORKS, INC.

and caused a copy to be hand-delivered to:

J. Craig Jackson, Director
Division of Occupational and Professional Licensing
160 East 300 South
Salt Lake City, Utah 84111



MICHAEL R. MEDLEY, Department Counsel
Utah Department of Commerce